

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2019-CP-00840-COA

**RICKEY LEE HOLIFIELD A/K/A RICKEY
HOLIFIELD**

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

DATE OF JUDGMENT:	02/13/2019
TRIAL JUDGE:	HON. CHRISTOPHER A. COLLINS
COURT FROM WHICH APPEALED:	SCOTT COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	RICKEY LEE HOLIFIELD (PRO SE)
ATTORNEY FOR APPELLEE:	OFFICE OF THE ATTORNEY GENERAL BY: BILLY L. GORE
NATURE OF THE CASE:	CIVIL - POST-CONVICTION RELIEF
DISPOSITION:	AFFIRMED - 09/08/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE CARLTON, P.J., WESTBROOKS AND LAWRENCE, JJ.

LAWRENCE, J., FOR THE COURT:

¶1. On October 9, 2017, Ricky Holifield pled guilty to the crimes of trafficking methamphetamine (Count I), possession of hydrocodone and acetaminophen (Count II), possession of marijuana (Count III), and possession of alprozalan (Count IV). As a result of his guilty plea to all four counts, Holifield was sentenced to serve a total of twenty years in the custody of the Mississippi Department of Corrections (MDOC).¹ On September 18,

¹ For Count I, Holifield was sentenced to serve fifteen years in the custody of the MDOC with the sentence to run consecutively to any sentence he was serving at the time of the order. He was further ordered to pay a fine of \$2,000. For Count II, Holifield was sentenced to serve five years in the custody of the MDOC to run consecutively to the sentence imposed for Count I and any other sentence he was serving at the time of the order.

2018, Holifield filed a motion for post-conviction collateral relief (PCR) and asserted the following: (1) violations under the United States Constitution and Mississippi Constitution, (2) a violation of due process, (3) a violation of double jeopardy, (4) ineffective assistance of counsel, and (5) the circuit court's lack of jurisdiction. The circuit court denied Holifield's PCR motion on February 13, 2019. Finding no error, we affirm the circuit court's judgment.

FACTS AND PROCEDURAL HISTORY

¶2. Holifield has a history of drug-related convictions that are relevant to the arguments presented in his PCR motion. On August 1, 2016, Holifield was charged in two separate indictments for the following crimes: possession of methamphetamine (as a second drug offender and habitual offender), which allegedly occurred on June 3, 2015; possession of methamphetamine, which allegedly occurred on February 14, 2015; and possession of less than thirty grams of marijuana (as a second drug offender and habitual offender), which allegedly occurred on February 14, 2015. These crimes will be referred to as the 2015 crimes. Holifield allegedly committed four additional crimes on April 22, 2016; he was not indicted for those crimes until August 1, 2017. The four new charges included trafficking methamphetamine (Count I), possession of hydrocodone and acetaminophen (Count II), possession of marijuana (Count III), and possession of alprozalan (Count IV). These crimes will be referred to as the 2016 crimes.

¶3. On October 3, 2016, Holifield entered a guilty plea to the 2015 crimes for which he

For Count III, Holifield was ordered to pay a fine in the amount of \$250. For Count IV, Holifield was ordered to pay a fine in the amount of \$1,000.

had already been indicted **but not** to the 2016 crimes for which he was still awaiting indictment. The circuit court withheld acceptance of his guilty plea pursuant to Mississippi Code Annotated section 41-29-150(d)(1) (Rev. 2013) and placed Holifield on non-adjudicated probation. As an additional condition of his non-adjudicated probation status, Holifield was placed in the Drug Court program. Shortly after entering the Drug Court program, Holifield violated several of the conditions of the program, including failing drug tests and failing to enroll in required treatment programs. After a probation revocation hearing on January 3, 2017, Holifield's non-adjudicated status was revoked, and the trial court accepted his guilty plea relating to the 2015 crimes of possession of methamphetamine and possession methamphetamine and marijuana and sentenced him to serve consecutive terms of eight years and four years in the MDOC's custody.

¶4. On August 1, 2017, Holifield was indicted for the 2016 crimes. As stated, those crimes are alleged to have occurred on or about April 22, 2016.² Holifield pled guilty to the 2016 crimes identified in Counts I through IV on October 9, 2017, and was subsequently sentenced to serve a total of twenty years in the custody of the MDOC to run consecutively to his twelve-year sentence previously ordered for the 2015 crimes. Holifield filed a motion to reduce his sentence with the Mississippi Supreme Court which was dismissed without prejudice on October 10, 2018.

¶5. On September 18, 2018, Holifield filed a PCR motion. Holifield asserted violations

² The four new 2016 crimes occurred on April 22, 2016; however, they were not part of the probation revocation hearing concerning the 2015 crimes, wherein Holifield was ultimately sentenced to jail for violating the terms of his non-adjudicated status probation.

of his United States and Mississippi Constitutional rights against double jeopardy as a result of his October 9, 2017 conviction for the 2016 crimes. Holifield alleged that the 2016 crimes were included and disposed of in his October 3, 2016 plea agreement for the 2015 crimes. Further, he alleged that the circuit court lacked jurisdiction to impose a sentence for the 2016 crimes because he had already been convicted, sentenced, and was currently serving time for those crimes. Finally, Holifield alleged that he received ineffective assistance of counsel for the 2016 crimes because his counsel failed to offer a defense on his behalf at the hearing and counsel's failure to investigate his previous convictions led to Holifield being prosecuted twice for the same crimes. The circuit court denied Holifield's PCR motion on February 13, 2019. On March 15, 2019, Holifield filed a motion for reconsideration, which the circuit court denied on April 24, 2019. Holifield appealed.

STANDARD OF REVIEW

¶6. “When reviewing a [circuit] court’s decision to deny a [motion] for post-conviction relief this Court will not disturb the trial court’s factual findings unless they are found to be clearly erroneous.” *Brown v. State*, 731 So. 2d 595, 598 (¶6) (Miss. 1999) (citing *Bank of Miss. v. S. Mem’l Park Inc.*, 677 So. 2d 186, 191 (Miss. 1996)). Questions of law are reviewed de novo. *Id.*

ANALYSIS

¶7. All of the constitutional violations and deficiencies in procedure that Holifield claimed in his PCR motion stem from his argument that the 2016 crimes were part of the guilty plea he entered on October 3, 2016, and that he was prosecuted and sentenced twice

for the same crime. We analyze a double jeopardy violation under the “same-elements” test, which the United States Supreme Court established in *Blockburger v. United States*, 284 U.S. 299, 304 (1932). “The *Blockburger* test instructs us to determine whether each offense contains an element not present in the other; if not, they are labeled the same offense for double-jeopardy purposes, and successive prosecution and/or punishments are constitutionally barred.” *Graves v. State*, 969 So. 2d 845, 847 (¶8) (Miss. 2007) (citing *Powell v. State*, 806 So. 2d 1069, 1074 (Miss. 2001)). The Court held, “The applicable rule is that, **where the same act or transaction** constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.” *Blockburger*, 284 U.S. at 304 (emphasis added).

¶8. In this case, the plea transcript from October 3, 2016, clearly indicates that Holifield pled guilty **only** to the crimes that he was charged as committing on June 3, 2015, and February 14, 2015. The 2016 crimes allegedly occurred on April 22, 2016, and Holifield was not indicted until August 1, 2017. The October 9, 2017 hearing transcript clearly indicates that on that date he pled guilty to the four 2016 crimes and not the 2015 crimes. Further, Holifield entered into his plea agreement for the 2015 crimes on October 3, 2016. He was not indicted for the 2016 crimes until August 1, 2017, approximately nine months later. Finally, it is clear from the circuit court pleadings, orders, and the record made at the time of the plea hearing that the plea deal that Holifield entered into on October 3, 2016, was limited to the 2015 crimes. Holifield’s two guilty pleas and two convictions did not arise

from the same act or transaction but were a product of crimes committed in 2015 and then additional crimes committed in 2016. It would be impossible for the 2016 crimes to be prosecuted in violation of the double jeopardy clause because they occurred on different dates, in different locations, and involved different drugs. Further, given the fact that the 2016 crimes were not a part of Holifield's 2016 plea agreement, it therefore follows that he was not prosecuted twice for the same crimes; his arguments to the contrary are without merit.

¶9. Holifield also alleged ineffective assistance of counsel at a "critical stage of a criminal procedure." He asserted that his "legal counsel allowed him to be prosecuted twice for the same crimes . . . in violation of the double jeopardy clause." Further, he asserted that his counsel failed to offer a defense on his behalf and should have informed the court that the 2016 crimes had already been prosecuted. Finally, Holifield alleged that "had legal counsel investigated the court records, he would have seen that there was no legal way the petitioner could have received sentences on the 2017 cause numbers." As previously stated above, there was no double jeopardy violation, and therefore there is no evidence to substantiate Holifield's claim of ineffective assistance of counsel. This argument is without merit.

¶10. Holifield asserts additional issues and arguments on appeal that were not contained in his original PCR motion. Holifield asserts additional arguments in his brief concerning violations in the prosecution of the 2015 crimes. Further, Holifield asserts an additional argument of waiver concerning the prosecution of the 2016 crimes in his brief, which was not addressed in his original PCR motion.

¶11. “In *Southern v. Mississippi State Hosp.*, 853 So. 2d 1212, [1214-15 (¶5)] (Miss. 2003), [the supreme court] reiterated the important procedural tenet that “[a] trial judge cannot be put in error on a matter not presented to him.” *Chantey Music Pub. Inc. v. Malaco Inc.*, 915 So. 2d 1052, 1060 (¶28) (Miss. 2005). “Precedent mandates that this Court not entertain arguments made for the first time on appeal as the case must be decided on the facts contained in the record and not on assertions in the briefs.” *Id.* (citing *Parker v. Miss. Game & Fish Comm’n*, 555 So. 2d 725, 730 (Miss. 1973)). Because Holifield failed to set forth these additional arguments in his original PCR motion, these issues are waived and procedurally barred on appeal.

CONCLUSION

¶12. After review, we find that there is no basis to support Holifield’s claims in his PCR motion. Accordingly, we affirm the circuit court’s denial of Holifield’s PCR motion.

¶13. **AFFIRMED.**

BARNES, C.J., CARLTON AND WILSON, P.JJ., GREENLEE, WESTBROOKS, McDONALD AND McCARTY, JJ., CONCUR.